

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER R5-2017-0701  
FOR  
TENG VANG AND WILLIAM CLAGETT  
ASSESSOR PARCELS 041-300-006-000 & 041-300-033-000  
SHASTA COUNTY

This Order is issued to Teng Vang and William Clagett (hereafter referred to as “Dischargers”) based on provisions of Water Code section 13304, which authorizes the Central Valley Regional Water Quality Control Board (Central Valley Water Board) to issue an order requiring the cleanup and abatement of wastes, and Water Code section 13267, which authorizes the Regional Water Board to require the preparation and submittal of technical and monitoring reports (Order).

The Executive Officer finds, with respect to the Dischargers’ acts, or failure to act, the following:

**Purpose of the Order**

1. This Order requires the Dischargers to clean up earthen materials, soil, sediment, nutrient rich waste waters, fertilizers, and pesticides that are discharging or threatening to discharge to tributaries of Ducket Creek, a tributary of the North Fork of Cottonwood Creek. These discharges and threatened discharges are a result of the Dischargers grading activities, road construction, watercourse crossing construction, dam construction, and point source discharge from a Koi tank to Ducket Creek on and from Shasta County Assessor Parcel Number’s (APN) 041-300-006-000 and 041-300-033-000 (the Site). Ducket Creek is considered waters of the state, as well as, waters of the United States. The Dischargers as the current owners of the Site are responsible for grading, road construction, a failing earthen dam, watercourse crossings, storage of chemical fertilizers and pesticides, storage of imported potting soil, improper disposal and storage of septage, and waste water discharge from a Koi farming operation. The dischargers performed this work in order to facilitate the cultivation of cannabis. The above mentioned activities have either previously discharged wastes or threaten future discharge of wastes to Ducket Creek and several tributaries thereto without authorization from applicable federal, state, and local agencies, including the Central Valley Water Board. This Order requires investigation and cleanup in compliance with the Water Code, the *Water Quality Control Plan for the Sacramento and San Joaquin River Basins*, Fourth Edition, revised April 2016 (Basin Plan), State Water Resources Control Board Resolution No. 92-49, Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304 (*Resolution 92-49*), and other applicable State and Regional Water Board plans, policies, and regulations.

**Responsible and Potentially Responsible Parties**

2. The Dischargers, as the current owners of the Site and/or the persons discharging or creating a threat of discharge, are responsible parties for the purpose of complying with this Order. This Order finds that Teng Vang and William Clagett are responsible parties.
  - a. Per records from the Shasta County Assessor-Recorder’s Office, Teng Vang purchased the 160 acre parcel, identified as Assessor Parcel Number (APN) 041-300-006-000, in April 2015.

- b. Investigation of Google Earth historic satellite imagery of the Site and the 8 February 2016 and 24 June 2016 joint inspections by California Department of Fish & Wildlife (CDFW) and Central Valley Water Board staff as documented in the attached Inspection Report (Attachment 1) indicates that clearing, grading, road and watercourse crossing construction, dam construction, and a Koi raising operation has resulted in a discharge of waste and continues to present a threat of discharge of waste from APN 041-300-006-000. As the property owner of Shasta County APN 041-300-006-000 Mr. Vang is a responsible party.
- c. Per records from the Shasta County Assessor-Recorder's Office, William Clagett purchased the 40 acre parcel, identified as APN 041-300-033-000 in October 2009.
- d. Investigation of Google Earth historic satellite imagery of the Site and the 8 February 2016 and 24 June 2016 joint inspections by CDFW and Central Valley Water Board staff as documented in the attached Inspection Report (Attachment 1) indicates that clearing, grading, road and watercourse crossing construction has resulted in a discharge of waste and continues to present a threat of discharge of waste from APN 041-300-033-000. As the listed property owner of Shasta County APN 041-300-033-000 Mr. Clagett is also a responsible party.
- e. During initial conversations with Mr. Clagett prior to the Site inspections, Mr. Clagett claimed that he had no involvement with development of the Site and had no knowledge as to what operations had been conducted on his property. Regardless, Mr. Clagett as the owner of APN 041-300-033-00 is responsible for the condition of that property and ensuring that the property does not discharge waste or create a threat of discharge of waste to waters of the state.
- f. During the initial Site inspection, conducted on 8 February 2016 and documented in the attached Inspection Report (Attachment 1), Mr. Vang admitted to controlling and operating the Site, including the graded areas located on Mr. Clagett's property. Mr. Vang was apparently unaware of the correct property boundaries and was utilizing the graded areas and roads located on Mr. Clagett's property.
- g. During the 24 June 2016 inspection the cannabis cultivation activities observed were occurring on both of the properties that together make up the Site. The cannabis cultivation activities were being supported by a water system and infrastructure, including improper storage of potting soil and amendments utilized for cannabis cultivation, which originated on the property owned by Mr. Vang.

### **Site Location and Description**

- 3. The Site is located along Ducket Creek Road approximately 3 miles north west of Ono, Shasta County in the vicinity of 40.499467°N and longitude 122.671154°W. The Site sits directly east of Ducket Creek, a Class II tributary to North Fork Cottonwood Creek.

### **Site History**

- 4. The 200 acre Site appears to have been largely undeveloped prior to 2011. Historical Google Earth satellite imagery from 2004, 2005, 2006, 2009 and 2010 indicates natural hillsides with little to no grading or access roads present. Subsequent clearing of trees and

grading is visible in the 2011 Google Earth imagery. Since 2011 the Site appears relatively unchanged, with numerous graded access roads and cleared hillsides. In June 2016 Staff participated in an overflight of the area and noted additional hillside clearing and the presence of cannabis plants throughout the Site. In addition to the cannabis cultivation staff noted the presence of water storage tanks and irrigation lines in support of the cannabis cultivation. There are no statements or applications on file with the State Water Resources Control Board's Division of Water Rights (Division of Water Rights) for water storage or diversion for the Site location. The Site has no prior regulatory oversight or history with the Central Valley Water Board.

### **Factual Basis of Order**

5. The following describes the initial discovery of the water quality concerns at the Site and the findings of the joint investigation of the Central Valley Water Board and CDFW.
  - a. The Site is located directly east of Duck Creek, a Class II watercourse that is tributary to North Fork Cottonwood Creek. The North Fork Cottonwood Creek is tributary to Cottonwood Creek and thence the Sacramento River. Road construction, hillside grading, watercourse crossing construction, dam construction, cannabis cultivation, chemical storage, disposal and storage of septage, and Koi farming had been conducted on the Site in close proximity to Duck Creek and its tributaries. The soil in the area is composed of decomposed granitic material, identified as Chaix coarse sandy loam by the United States Department of Agriculture (USDA) Web Soil Survey, and has a high erosion hazard rating. Much of the above mentioned Site activities were conducted on steep hillsides above several tributaries to Duck Creek and lacked appropriate water quality protection measures.
  - b. In December 2015, Staff was performing a Google Earth aerial imagery review of western Shasta County and noted the presence of what appeared to be several access roads on steep hillsides above Duck Creek and several tributaries thereto. Due to the close proximity to Duck Creek and its tributaries, in conjunction with the steep hillsides, Staff determined that an on-site inspection of the access roads and graded areas was needed to assess the possible water quality violations.
  - c. Staff researched the area in question and determined that the grading and access road construction was located on Shasta County APN's 041-300-006-000 and 041-300-033-000, owned by Teng Vang and William Clagett respectively. Using this information Staff obtained contact information for both property owners to discuss the Site.
  - d. On 1 February 2016, Staff contacted both Mr. Clagett and Mr. Vang by phone to discuss the Site and obtain consent to perform a Site inspection. Mr. Clagett agreed to allow us to inspect his property in his absence. Mr. Vang agreed to an inspection of his property; however Mr. Vang requested that he be present during the inspection. Mr. Vang indicated that he would be working on his property on 8 February 2016 and that we could meet at his property around 12:00 PM. Staff agreed and confirmed that date with Mr. Clagett, to which Mr. Clagett consented. During conversations with both property owners Staff continually reiterated the locations of the properties, citing the APN's and the general locations outside of Ono, CA, to make sure that the correct property owners had been contacted. Both parties, Mr. Vang and Mr. Clagett, agreed that they owned the respective properties.

- e. On 8 February 2016, Staff attempted to perform an on-Site inspection as agreed to by the property owners. Staff arrived on Site at approximately 12:00 PM. Staff waited for Mr. Vang to arrive for approximately 30 minutes, after which Staff decided to begin inspecting the property owned by Mr. Clagett while waiting for Mr. Vang to arrive. While parking and assembling gear to begin inspecting an access road located on Mr. Clagett's property a vehicle arrived. A passenger was sitting in the back of the vehicle, the bed of a pickup truck, and asked who we were. Staff identified themselves and proceeded to explain that we had been given permission by William Clagett, the property owner whose property we were inspecting, to access and inspect for water quality violations. Staff then explained that we were supposed to meet with Teng Vang, the property owner to the south of Mr. Clagett, to perform an inspection on his property as well. At that point the driver exited the vehicle and identified himself as Teng Vang, the property owner south of Mr. Clagett. Staff introduced themselves and explained that we had spoken on the phone regarding inspecting his property. Mr. Vang indicated that he did not recall ever having spoken with Staff regarding an inspection of his property. Staff then clarified that Teng Vang, the listed property owner of APN 041-300-006-000 with a listed mailing address of 7313 Circle Parkway, Sacramento, CA, had been contacted regarding the water quality concerns and performing an inspection. Again, Mr. Teng Vang identified himself as the property owner and repeated that he did not recall ever having spoken with Staff. At that point Staff explained the reasoning for performing the inspection and asked permission to continue with the inspection. Mr. Vang denied consent to inspect his property. During this conversation Staff was physically located on Mr. Clagett's property, based on a parcel layer loaded on Garmin Global Positioning System (GPS) units, and Staff told Mr. Vang that we would continue the inspection on Mr. Clagett's property and then leave the area. Mr. Vang then stated that we were on his property, and not on Mr. Clagett's property. Staff informed Mr. Vang that according to our GPS units we were located on Mr. Clagett's property, to which Mr. Vang again stated that we were not. Mr. Vang claimed that the GPS units were wrong and that the property line is located further to the north. Staff asked Mr. Vang if he would escort us to where he believed the property boundary was. Mr. Vang agreed and escorted Staff to the property boundary, which was located further north than mapped on the Garmin GPS units. Staff then asked Mr. Vang if the access roads and grading were located on his property, or both his property and Mr. Clagett's property, to which Mr. Vang claimed that it was all on his (Mr. Vang's) property and under his (Mr. Vang's) control. While walking back to the vehicles, Staff noted the presence of a large tank being fed by a PVC pipe and inquired as to the purpose of the tank. The passenger who arrived with Mr. Vang indicated that they were raising Koi in the tank. At that point Mr. Vang asked Staff to leave his property and double check the property boundaries of his and Mr. Clagett's property.
- f. After attempting to inspect the Site on 8 February 2016, Staff confirmed the property boundaries using a publicly available geographical information system (GIS) file produced by Shasta County, for both Mr. Clagett and Mr. Vang's respective properties and determined that the boundaries that were displayed on the Garmin GPS units were correct. Therefore the access roads and any grading at the Site were located on both parcels; however Mr. Vang believed that the access roads and graded areas were on his property.

- g. On 16 June 2016, Staff participated in a flight covering the Igo and Ono areas of Shasta County. During the overflight Staff observed cannabis cultivation occurring on the properties owned by Mr. Vang and Mr. Clagett. In addition to the cannabis cultivation, Staff noted what appeared to be fresh grading and vegetation clearing on a hillside in apparent preparation for conducting the cultivation activities.
- h. Staff informed California Department of Fish and Wildlife (CDFW) wardens of the cannabis cultivation occurring at the Site. Due to the Site's history and Staff's attempts at previous inspections, CDFW determined that a search warrant would be sought to inspect the Site for Fish and Game code violations and requested that Staff be present to identify impacts to water quality.
- i. On 23 June 2016, CDFW Warden Aaron Galwey obtained a search warrant from the Shasta County Superior Court for the entire Site. The warrant contained language authorizing Staff to participate in the search to inspect for water quality violations.
- j. On 24 June 2016, Staff met with CDFW wardens and environmental scientists, and Shasta County code enforcement staff to inspect the Site. During the Site inspection Staff observed improper storage of various chemical fertilizers, pesticides, fuel, imported potting soil, and septage. Staff also observed the results of grading activities, constructed access roads, constructed benches, cannabis cultivation, constructed watercourse crossings, a failing earthen dam, a water diversion, a Koi farming operation, and a waste water discharge to Ducket Creek.
- k. Storage of chemical fertilizers and pesticides, fuels, imported potting soils, and disposal and storage of septage were occurring on APN 041-300-006-000 (Vang). The storage of these materials was occurring directly adjacent to Ducket Creek. Storage of chemical fertilizers, pesticides, and fuels were occurring directly on the ground surface with no cover or secondary containment, and also within shed type structures directly adjacent to Ducket Creek. Chemicals stored on the ground surface and lacking appropriate cover or containment present a threat of container degradation leading to rupture and discharge to Ducket Creek. Discharges of pesticides and fuels to surface water bodies can lead to habitat degradation and aquatic life kills. Discharges of fertilizers to surface water bodies could lead to excessive nutrient loading that can lead to algal blooms, lowered dissolved oxygen levels, and potential fish and other aquatic life kills. Disposal and storage of septage was observed in the form of pit toilets that were installed above a vertical cutbank on Ducket Creek. During the inspection the pits utilized to store the septage appeared to be unlined and presented a risk of discharge of septage directly to Ducket Creek. A large deposit of imported potting soil was observed directly adjacent to Ducket Creek. The imported potting soil was uncovered, uncontained, and deposited directly onto the native ground surface, which naturally drains towards Ducket Creek, creating a threat of discharge to Ducket Creek.
- l. On APN 041-300-006-000 (Vang) hillside grading, cannabis cultivation, access roads, a watercourse crossing, and a failing dam were observed.
  - 1) Approximately 0.90 acres were graded to create the Southern Cannabis Cultivation Area. Grading occurred along a ridge top and along slopes that drain to tributaries to Ducket Creek. The grading occurred on highly erodible soils and lacked proper erosion and sediment control measures. Active cannabis cultivation was occurring within the graded area during the inspection. As of the

day of inspection, the Southern Cannabis Cultivation Area presented threats of sediment discharge to tributaries to Ducket Creek.

- 2) Two access roads were identified on APN 041-300-006-000, the Mid Access Road and the Lower Access Road. The Mid Access Road was created by grading up a hillside to a ridge top and was utilized to access and facilitate cannabis cultivation activities. The lowest portion of the Mid Access Road traverses a steep slope and construction has resulted in a near vertical cut slope and an over steepened fill slope above a tributary to Ducket Creek. A straw fiber roll or "wattle" was installed along the outside, downslope edge of the Mid Access Road which indicates some knowledge of erosion control; however the Mid Access Road in general lacks appropriate erosion and sediment control measures to prevent discharges to surface waters. The Lower Access Road branches off from the Mid Access Road within the Southern Cannabis Cultivation Area. The Lower Access Road traverses a steep hillside that drains directly towards a tributary to Ducket Creek. At the intersection with the tributary, the Lower Access Road crosses the tributary via a constructed watercourse crossing labeled Crossing 3. Crossing 3 was constructed utilizing a 12 inch plastic culvert and placement of earthen fill material over the top of the culvert. Approximately 38 cubic yards of earthen fill material were placed within the tributary to construct Crossing 3. The Mid Access Road and the Lower Access Road present threats of sediment erosion and discharge to tributaries to Ducket Creek. Construction of the Lower Access Road has resulted in the deposition of approximately 38 cubic yards of earthen material directly into a tributary to Ducket Creek.
  - 3) A failing earthen dam was identified on APN 041-300-006-000 (Vang). The remaining portion of the dam was covered with erosion control netting and was beginning to re-vegetate with grasses. Along the northern portion of the earthen dam a large erosional gully was observed, indicating that the dam had previously overtopped or otherwise failed. The erosional gully discharged directly into the tributary and has begun to reestablish itself as the tributary channel. Approximately 41 cubic yards of earthen fill material remains within the tributary from the original dam structure, and approximately 13 cubic yards of earthen fill material eroded and discharged to the tributary during the previous failure(s).
- m. On APN's 041-300-033-000 (Clagett) and 041-300-006-000 (Vang) a hillside bench, cannabis cultivation, and an access road were observed.
- 1) A large cut and fill bench was observed on a hillside on both APN's 041-300-033-000 (Clagett) and 041-300-006-000 (Vang) to support cannabis cultivation, identified as the Northern Cannabis Cultivation Area in the inspection report. The bench was created by excavating into the hillside and depositing the excavated material onto the ground surface, creating a flat surface. The bench may have been originally constructed as an access road; however it was being utilized for cannabis cultivation during the inspection. The cut slope of the bench is near vertical and the fill slope of the bench is over steepened when compared to the natural hillslope gradient. Storm water drainage is concentrating on the bench and causing erosion of the earthen bench fill materials, creating a gully. Staff calculated that approximately 14 cubic yards of earthen fill materials had

eroded and discharged to a tributary to Duckett Creek based on inspection observations. A dilapidated and unmaintained silt fence was located along the fill slope of the bench, indicating some knowledge of sediment control measures.

- 2) Two watercourse crossings were created during construction of the bench, both of the crossings are located on APN 041-300-033-000 (Clagett). Crossing 1 is located on a Class III tributary to Duckett Creek and was constructed using a 12 inch plastic culvert with earthen fill placed on top of the culvert to create a running surface. In total, approximately 44 cubic yards of earthen fill material were utilized to construct Crossing 1. Crossing 1 has, since original construction, filled with sediment and debris causing water to divert out of the natural watercourse channel. The diversion of water from the natural channel has created a gully in the bench surface and resulted in the discharge of approximately 7 cubic yards of earthen material to a tributary to Duckett Creek. Crossing 2 is located on a Class III tributary to Duckett Creek. Crossing 2 was constructed using a 12 inch plastic culvert with earthen fill placed on top of the culvert. Approximately 60 cubic yards of earthen fill material were utilized to construct Crossing 2. Since original construction, the culvert in Crossing 2 has filled with sediment and debris and caused water to divert around the crossing. The diversion of water around the crossing has created an erosional gully in the bench surface, resulting in the discharge of approximately 10 cubic yards of earthen fill material to a tributary to Duckett Creek.
- 3) The Upper Access Road was observed on APN 041-300-033-000 (Clagett), with small portions extending onto APN 041-300-006-000 (Vang). The Upper Access Road was created with little to no cuts or fills, and mostly consists of grading to remove vegetation on a steep hillside. The driving surface of the road consists of native soils and is exhibiting erosional issues in the form of rills. A dilapidated and unmaintained silt fence was located along the outside, downslope, edge of the Upper Access Road indicating some knowledge of sediment control measures. In its current state the Upper Access Road threatens discharge of sediment to Duckett Creek and tributaries thereto.
- n. On APN 041-300-006-000 (Vang) Staff documented a water diversion on a naturally occurring spring that is tributary to Duckett Creek. The water diversion was created by stacking concrete blocks at the spring source to block the entire flow of the spring. A PVC pipe was used to divert the flow from the concrete blocks to two containers used to filter solid material out of the water. From the two containers the flow was directed to PVC pipe that was routed to the Koi tank. A submersible pump installed in the Koi tank was used to pump water uphill to the Northern Cannabis Cultivation Area and eventually to the Southern Cannabis Cultivation Area to irrigate the cannabis plants. Research into the status of water rights on APN 041-300-006-000 yielded no active statements of diversion or other appropriative water right for the parcel.

### **Beneficial Uses and Water Quality Objectives**

6. The Basin Plan designates beneficial uses, establishes water quality objectives, contains implementation programs for achieving objectives, and incorporates by reference, plans and policies adopted by the State Water Resources Control Board. Duckett Creek is tributary to North Fork Cottonwood Creek and thence Cottonwood Creek.

- a. The designated beneficial uses for Cottonwood Creek are: Municipal and Domestic Supply (MUN), Irrigation and Stock Watering (ARG), Contact and Canoeing and Rafting Recreation (REC-1), Other Noncontact Recreation (REC-2), Warm Freshwater Habitat (WARM), Cold Freshwater Habitat (COLD), Cold Migration (MIGR), Warm and Cold Spawning (SPWN), Wildlife Habitat (WILD), Process (PROC), Service Supply (IND), and Power (POW). Beneficial uses of any specifically identified water body generally apply to all of its tributaries.
- b. The designated beneficial uses of the underlying groundwater include municipal and domestic supply (MUN), agricultural supply (AGR), industrial service supply (IND), and industrial process supply (PRO).
- c. The Basin Plan lists specific water quality objectives for inland surface waters. These objectives include in part, limitations on increased temperature, sediment, settleable and suspended material, and turbidity.

### **Unpermitted Activities**

7. Central Valley Water Board staff determined that the grading, access roads, terracing, watercourse crossings, dam construction, and water diversion activities at the Site occurred without coverage under any of the following regulatory permits:
  - a. Any waste discharge requirement, conditional waiver, or water quality certification issued by either the Central Valley Water Board or the State Water Board;
  - b. A Lake and Streambed Alteration (LSA) Agreement (1600 Agreement) from CDFW;
  - c. A CWA section 404 dredge and fill permit from the Army Corps of Engineers;
  - d. A CWA section 401 Water Quality Certification from the Central Valley Water Board;
  - e. A permit, license, or registration for water storage from the Division of Water Rights; or
  - f. A grading permit issued by Shasta County.

### **Legal Authority to Require Clean Up and Abatement**

8. "Waste" is defined by Water Code section 13050, subdivision (d) as,
 

sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal.

Sediment and sediment laden storm water, when discharged to waters of the state, is deemed a "waste" as defined in Water Code section 13050.



9. "Pollution" is defined by Water Code section 13050, subdivision (l)(1) as,

an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following:

*i. The waters for beneficial uses;*

*ii. Facilities which serve these beneficial uses*

Discharges of sediment and other inert material alter the hydrologic and sediment transport regimes of surface waters by affecting the flow of water and establishment of vegetation. Such changes may lead to adverse conditions such as flooding, increases in suspended sediment and turbidity, accelerated erosion of the adjacent channel bed or banks, and localized accumulation of deleterious materials. Additionally, such discharges directly threaten habitat for aquatic species dependent upon native sediment and vegetation characteristics (MIGR, SPWN, and WILD). Increased sedimentation and turbidity can result in increased treatment and/or maintenance costs for downstream agricultural and municipal users that withdraw and treat the water (AGR, and MUN). Sediment laden storm water discharges to and the resulting turbidity within surface waters can also affect the recreational and aesthetic enjoyment of the surface waters (REC-1, REC-2).

The grading and clearing activities, access road construction, bench construction, watercourse crossing construction, dam construction and subsequent failure, Koi tank wastewater discharge, improper storage and potential disposal of septage on Site, improper storage of chemicals on Site, and improper storage of imported potting soil on Site have led to the unauthorized discharge and threat of discharge of wastes into surface waters and have created, or threaten to create, a condition of pollution by unreasonably affecting the beneficial uses of waters of the state. Duckett Creek is tributary to North Fork Cottonwood Creek and Cottonwood Creek. Accordingly, the beneficial uses of the Cottonwood Creek discussed above in paragraph no. 6 also apply to all of its tributaries.

10. Water Code section 13304, subdivision (a) states, in relevant part:

Any person who has discharged or discharges waste into waters of this state in violation of any waste discharge requirements or other order to prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and causes, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts....Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

The Dischargers caused or permitted waste in the form of earthen materials, pesticides, fuels, septage, and waste water to be discharged or deposited where it will be, or has the potential to be discharged to surface waters which drain to Duck Creek, a tributary to North Fork Cotton Wood Creek in violation of Water Code sections 13260 and 13376, which creates a condition of pollution subject to this Order in accordance with Water Code section 13304.

11. *Resolution 92-49* is incorporated into the Basin Plan as Appendix 9. *Resolution 92-49* sets forth the policies and procedures to be used during an investigation and cleanup of a polluted site, and requires that cleanup levels be consistent with State Water Board Resolution No. 68-16, the *Statement of Policy with Respect to Maintaining High Quality Waters in California (Antidegradation Policy)*. *Resolution 92-49* requires the waste to be cleaned up in a manner that promotes attainment of either background water quality, or the best water quality which is reasonable if background levels of water quality cannot be restored. Any alternative cleanup level to background must: (1) be consistent with the maximum benefit to the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Water Board. *Resolution 92-49* directs that investigations proceed in a progressive sequence. To the extent practical, it directs the Central Valley Water Board to require and review for adequacy written work plans for each element and phase, and the written reports that describe the results of each phase of the investigation and cleanup.
12. Mr. Claggett's responsibilities under this Order are limited to APN 041-300-033-000.
13. The Central Valley Water Board, by adopting this Order, is not making any determination as to apportionment of liability among or between responsible parties and nothing in this Order is intended to, or shall be interpreted as, limiting a responsible party's ability to seek reimbursement or indemnity from any and all other responsible parties.

#### **Cleanup and Abatement Action Necessary**

14. Graded and cleared areas of the Site are at risk of erosion and sediment discharge to waters of the state. Constructed watercourse crossings have resulted in the deposition of earthen fill materials directly into several watercourse channels and subsequent failures have led to the discharge of earthen fill material to waters of the state. An existing and partially failed earthen dam has resulted in the discharge of earthen fill materials to waters of the state and is currently at risk of further failure and discharges of earthen fill material to waters of the state. Improper storage of chemicals, soils, and septage threaten to discharge wastes and pollutants to waters of the state. The Koi tank is actively discharging waste water to Duck Creek, a water of the state. Cleanup and abatement is necessary to ensure that the existing condition of pollution is cleaned up, that threatened unauthorized discharges to surface waters originating from the Site are prevented, background water quality levels are restored, and that any impacts to beneficial uses are mitigated. The current condition of pollution is a priority violation as outlined in the State Water Resources Control Board Water Quality Enforcement Policy (Enforcement Policy) and the issuance of a cleanup and abatement order pursuant to Water Code section 13304 is appropriate and consistent with policies of the Central Valley Water Board.

### Technical Reports Required

15. Water Code section 13267(a) provides that the Regional Water Board may investigate the quality of any water of the State within its region in connection with any action relating to the Basin Plan. Water Code section 13267, subdivision (b) provides that the Regional Water Board, in conducting an investigation may require dischargers to furnish, under penalty of perjury, technical or monitoring program reports. The technical reports required by this Order are necessary to assure compliance with this Order and to protect the waters of the state. The technical reports are further necessary to demonstrate that appropriate methods will be used to cleanup waste discharged to surface waters and surface water drainage courses and to ensure that cleanup complies with Basin Plan requirements. In accordance with Water Code section 13267, subdivision (b) the findings in this Order provide the Dischargers with a written explanation with regard to the need for remedial action and reports and identify the evidence that supports the requirement to implement clean up and abatement activities and submit the reports. The Dischargers named in this Order own and/or operate, have owned and/or have operated the Site from which waste was discharged and thus are appropriately named as parties responsible for providing the reports.

### California Environmental Quality Act

16. Issuance of this Order is an enforcement action taken by a regulatory agency to enforce the regulatory provision of the Basin Plan, and is exempt from provisions of the California Environmental Quality Act (CEQA) (Public Resources Code, § 21000 et seq.) in accordance with California Code of Regulations, title 14, § 15321. This action may also be considered exempt because it is an action by a regulatory agency for the protection of natural resources (Cal. Code Regs., tit. 14, § 15307) and an action by a regulatory agency for the protection of the environment (Cal. Code Regs., tit. 14, § 15308). To the extent that the Order requires earth disturbing and revegetation activities not to exceed five acres in size and to ensure restoration of stream habitat and prevent erosion, such actions are considered exempt from the provisions of CEQA pursuant to California Code of Regulations, title 14, § 15333. Should additional environmental review be required in connection with future discretionary regulatory actions at this site, the Board may recover the costs associated with preparing and processing environmental documents from the discharger (Pub. Resources Code, § 21089).

### No Limitation of Water Board Authority

17. This Order in no way limits the authority of the Central Valley Water Board to take any enforcement actions authorized by law.

### REQUIRED ACTIONS

**IT IS HEREBY ORDERED** that, pursuant to Water Code sections 13267 and 13304, that Teng Vang and William Clagett (Dischargers) shall cleanup and abate the impacts to water quality associated with the discharge and threatened discharge of earthen materials, chemicals, fuels, septage, and waste water to waters of the state as follows:

1. **By 31 March 2017**, the Dischargers shall submit a proposed **Interim Erosion and Sediment Control Plan** (hereafter "Interim Plan") prepared by an appropriately licensed professional for the completion of stabilization and mitigation efforts to minimize erosion

and future discharge of earthen fill materials, sediment, chemicals , fuels, septage, and waste waters to Duckett Creek and tributaries thereto. The Interim Plan shall be inclusive of, but not limited to, the following:

- a. A detailed area map accurately depicting existing topography, graded areas, access roads, watercourse crossings, the failed dam, the Koi tank, pit toilets, and all surface water courses/drainages,
- b. Identification of all locations where sediment has discharged and threatens to discharge to surface waters or surface water drainage courses,
- c. Using the above information, identify all areas of immediate concern, along with proposed emergency mitigation measures to be implemented at each area of concern necessary to stabilize the Site during the 2016/2017 wet weather period.  
Recommendations to be included:
  - i. Stabilize all identified areas of immediate concern with erosion control mulches, blankets, mats, tarps, or other accepted erosion control methods in sufficient quantities to protect the disturbed soil surface from the forces of rain drop impact and overland flow.
- d. Provide for the submittal of monthly monitoring reports assessing Site conditions, which shall include documentation and photograph(s) of mitigation measures completed, along with recommendations for additional emergency measures or repairs to previously identified areas of immediate concern, where appropriate.

Central Valley Water Board staff will review the Interim Plan in consultation with the Dischargers or their authorized agent(s) and other responsible agencies immediately upon receipt. Work to implement the proposed emergency measures shall begin immediately upon approval of the Interim Plan.

2. By **30 April 2017**, the Dischargers shall have completed work outlined in the Interim Plan, stabilizing the Site for the remainder of the 2016/2017 wet weather period.
3. By **15 May 2017**, the Dischargers shall provide a report of completion to the Central Valley Water Board. This report shall include a summary and photographs of work completed and installed erosion and sediment control measures at the Site.
4. By **30 June 2017**, the Dischargers shall provide a proposed **Restoration Monitoring and Mitigation Plan** (hereinafter "RMMP"). The RMMP shall include, but not be limited to, the following elements:
  - a. Plans for Site restoration, including how long-term impacts from the Site runoff will be abated (i.e. re-grading, establishing permanent ground cover, watercourse crossing re-design, etc.), as well as proposed mitigation to restore beneficial uses and to compensate for and minimize any further impacts to Duckett Creek and tributaries thereto. This shall include:
    - i. Providing plans for removal of the active waste water discharge to Duckett Creek from the Koi tank.

- ii. Plans for removal of and stabilization of the imported potting soil deposit directly adjacent to Ducket Creek.
- iii. Plans for removal and remediation of the pit toilets located on the bank of Ducket Creek.
- iv. Removal and proper storage of all chemical fertilizers, pesticides, fuels, and other chemicals from areas where they may discharge to Ducket Creek.
- v. Providing erosion and sediment control measures to the graded areas in the Southern Cannabis Cultivation Area.
- vi. Providing erosion and sediment control measures to the Upper, Mid, and Lower Access Roads.
- vii. Plans for reconstruction or removal and stabilization of Crossings 1, 2, and 3.
  - 1. If the Crossings are to be removed, include bank stabilization measures for the resulting slopes to prevent erosion and bank failure.
  - 2. If the Crossings are to be re-constructed, the Crossings shall be sized to adequately accommodate 100 year flood flows along with associated debris loads, shall be treated for diversion potential, and shall be adequately armored to prevent erosion of the upstream and downstream fill slopes.
- viii. Providing erosion and sediment control measures to the bench created and utilized for cannabis cultivation in the Northern Cannabis Cultivation Area.
- ix. Providing stabilization and erosion control measures to the remaining portion of the dam to prevent future failure and discharge of the remaining dam fill materials.
- x. Providing stabilization measures to the failure gully at the Dam to prevent further down cutting and channel migration.
- xi. Proof of valid water right to divert and store the water currently being diverted from the naturally occurring spring.
  - 1. If a valid water right is not currently held, the diversion shall be shut off and the spring shall be restored to flow in its natural channel until a valid water right for diversion and storage is obtained.
- b. The RMMP shall contain, at a minimum, design specifications and drawings, an implementation schedule, and a monitoring plan. Whenever feasible, the RMMP shall incorporate use of appropriate native or endemic species in any re-vegetation efforts.
- c. The implementation schedule in the RMMP shall include detailed project milestones that take into account the time anticipated to obtain all applicable local, state, and federal permits necessary to fulfill the requirements of this Order. The time for providing that notice and obtaining that agreement should be considered and accounted for when developing a RMMP that complies with the deadlines provided in this Order.

Central Valley Water Board staffs will review the RMMP in consultation with the Dischargers or their authorized agent(s) and other responsible agencies immediately upon receipt. Once approved, work may begin immediately, but no later than the deadlines as outlined by this order.

5. **By 15 July 2017**, the Dischargers shall begin implementation of the RMMP.
6. **By 31 August 2017**, the Dischargers shall complete all approved restoration and mitigation measures described in the proposed RMMP.
7. **By 1 December 2017**, the Dischargers shall submit a **Completion Report** for the RMMP to the Board. The Completion Report shall accurately depict all construction and/or mitigation measures and document that the above plan to restore, compensate for, and minimize any further impacts to East Fork Stillwater Creek has been fully implemented.
8. **By October 1 of each year** (starting 1 October 2018) the Dischargers shall submit an annual monitoring report to the Board. The Annual Monitoring Report shall summarize monitoring results of RMMP and shall continue until at least three years after successful completion of the RMMP, or until a report, acceptable to the Assistant Executive Officer, is submitted showing the dischargers have met the requirements of the RMMP.

## **GENERAL REQUIREMENTS AND NOTICES**

### **Duty to Use Qualified Professionals**

9. All technical reports required herein that involve planning, investigation, evaluation, or design, or other work requiring interpretation and proper application of engineering or geological sciences, shall prepare by or under the direction of persons registered to practice in California pursuant to California Business and Professions Code sections 6735, 7835, and 7835.1. As required by these laws, completed technical reports must bear the signature(s) and seal(s) of the registered professional(s) in a manner such that all work can be clearly attributed to the professional responsible for the work.

### **Signatory Requirements**

10. All technical reports submitted by the Dischargers shall include a cover letter signed by the Dischargers, or a duly authorized representative, certifying under penalty of law that the signer has examined and is familiar with the report and that to their knowledge, the report is true, complete, and accurate. The Dischargers shall also state if it agrees with any recommendations/proposals and whether it approves implementation of said proposals. Any person signing a document submitted under this Order shall make the following certification:

*"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."*

### **Notice of Onsite Work**

11. The Dischargers or their authorized agent(s) shall notify Board staff at least 48 hours prior to any onsite work, testing, or sampling that pertains to environmental remediation and investigation and is not routine monitoring, maintenance, or inspection or that has not been fully described in the RMMP.

### **Notice of Change in Ownership or Occupancy**

12. Report Any Changes in Ownership or Occupancy: the Dischargers shall file a written report on any changes in the Site's ownership or occupancy. This report shall be filed with the Central Valley Water Board no later than 30 days prior to a planned change and shall reference the number of this Order.

### **Submissions**

13. All monitoring reports, technical reports or notices required under this Order shall be submitted to:

Griffin Perea  
364 Knollcrest Dr., Ste. 205  
Redding, CA 96002  
(530) 224-3217

### **Other Regulatory Requirements**

14. The Dischargers shall obtain all applicable local, state, and federal permits necessary to fulfill the requirements of this Order prior to beginning the work. For example, FGC section 1602 requires a person or entity to notify the Department of Fish & Wildlife before: 1) substantially diverting or obstructing the natural flow of a river, stream, or lake; 2) substantially changing the bed, channel, or bank of a river, stream, or lake; 3) using any material from the bed, channel, or bank of a river, stream, or lake; and/or 4) depositing or disposing of debris, waste, material containing crumbled, flaked, or ground pavement where it may pass into a river, stream, or lake. The failure to notify the Department of Fish & Wildlife constitutes a violation of FGC section 1602.

### **Cost Recovery**

15. Pursuant to Water code section 13304, the Regional Water Board is entitled to, and may seek reimbursement for, all reasonable costs it actually incurs investigating and abating the effects of the unauthorized discharges of waste and to oversee/supervise the cleanup of such waste, or other remedial action, required by this Order. The Dischargers shall enroll in the State Water Board's Cost Recovery Program and shall reimburse the State of California for all reasonable costs actually incurred by the Regional Board.

### **Delayed Compliance**

16. If for any reason, the Dischargers are unable to perform any activity or submit any document in compliance with the schedule set forth herein, or in compliance with any work schedule submitted pursuant to this Order and approved by the Assistant Executive Officer, the Dischargers may request, in writing, an extension of the time specified. The

extension request shall include justification for the delay. Any extension request shall be submitted as soon as a delay is recognized and prior to the compliance date. An extension may be granted by revision of this Order or by a letter from the Assistant Executive Officer. The Board acknowledges that local, state, and federal permits may cause a delay beyond the control of the Dischargers and will take all the available relevant facts into consideration when considering whether or not to grant an extension request.

If, in the opinion of the Assistant Executive Officer, the Discharger fails to comply with the provisions of this Order, the Assistant Executive Officer may refer this matter to the Attorney General for judicial enforcement, may issue a complaint for administrative civil liability, or may take other enforcement actions. Failure to comply with this Order may result in the assessment of Administrative Civil Liability of up to \$10,000 per violation, per day, depending on the violation, pursuant to the Water Code, including sections 13268, 13350 and 13385. The Central Valley Water Board reserves its right to take any enforcement actions authorized by law.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

[http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality)

or will be provided upon request.

This Order is issued under authority delegated to the Executive Officer by the Central Valley Water Board pursuant to Resolution R5-2009-0027 and is effective upon signature.

Original signed by

\_\_\_\_\_  
Pamela C. Creedon, Executive Officer

3/8/2017

\_\_\_\_\_  
(Date)

Attachment 1 – 24 June 2016 Inspection Report